Helpdesk Research Report: The Politics of Justice Reform
Date: 7/03/08

Query: Please provide case studies that demonstrate how politics affect justice sector reform and vice versa, with particular focus on Asia and prison reform.
Enquirer: Politics and the State Team

Contents

1. Overview

There are a wealth of case studies available that discuss the impact of politics on justice reform, with less available on how justice reform impacts politics. Most of the resources identified demonstrate how the macro-political environment impacts on the justice sector or explore political dynamics within the sector that affect reform. Less material was found that discusses the political relationship between state and non state actors, and regional and international political repercussions from justice reform. Several of the case studies emphasise lack of political will as an important barrier to justice reform, for example through budgetary under-funding of the sector, executive interference in the judiciary and politically generated cultures of impunity. The case studies on the prison and police reform particularly emphasise the impact of strong patronage structures within the sectors on reform success.

This query response is by no means an exhaustive list. It is likely that additional relevant case studies could be found that relate to this broad question if more time was available to sift through the extensive literature.

2. Prison reform in Asia

- ICG, 2007, '"Deradicalisation" and Indonesian Prisons', Asia Report no. 142, International Crisis Group, Jakarta / Brussels:
  http://www.crisisgroup.org/home/index.cfm?id=5170&l=1

This report explores how a prison reform programme that aims to meet the economic needs of the families of radical jihadi prisoners has been successful in changing the prisoners' attitudes to terrorist activity, and has therefore been an effective programme of 'deradicalisation'. The authors discuss how internal prison politics amongst groups of inmates impact on the chances of successful 'deradicalisation' reform. The authors also emphasise the pervasive levels of corruption in Indonesian prisons.

- ICG, 2006,'Kyrgyzstan's Prison System Nightmare', Asia Report no. 118, International Crisis Group, Brussels:
  http://www.crisisgroup.org/home/index.cfm?id=4336&l=1

This report critiques the prison reform strategy published by the Government of Kyrgyzstan for not going far enough. It claims that, given the current degenerated state of the country's prisons, the prison population poses a considerable risk to the political stability of Kyrgystan.

There are a lack of barriers between prison and civilian, including political, life. Criminal leaders run the prisons, effectively viewing prison populations as armies in reserve. Strict, violent caste systems, powerful informal treasuries and criminal empires all operate within the prison walls. Violent prison riots in 2005 led to public demonstrations calling for the Prime Minister's resignation.

3. Prison reform outside Asia

- Goyer, K. C., 2004, 'Incarcerating and Rehabilitating Offenders' in Schonteich, M., Minnaar, A., Mistry, D. and Goyer, K.C., Private Muscle: Outsourcing the Muscle of Criminal Justice Services, Monograph 93, Institute for Security Services, South Africa:
  http://www.gsdrc.org/go/display&type=Document&id=1710

This report briefly discusses various political dimensions of prison reform in South Africa, for example the 'politicisation of crime policy', the pseudo-military institutional style of South African prisons and the dismantling of Apartheid prison policies in 1991. Prison overcrowding is discussed in detail, and it is noted that overcrowding is seriously exacerbated by poor people's inability to pay bail. The bulk of the report focuses on the involvement of the non-state, private sector in prison management, although questions are raised as to the appropriateness of engaging profit-motivated actors in sector reform.

- Zoubir, Y. and Ait-Hamadouche, L., 2004, 'Between Democratisation and Counter-Terrorism: Penal Reform in Algeria' in Ferguson, C. and Isima, J., 2004, 'Providing Security for People: Enhancing Security Through Police, Justice and Intelligence Reform in Africa, Global Facilitation Network for Security Sector Reform, Shrivenham, UK: http://www.ssronline.org/edocs/gfn060_pfsp2.pdf

This article demonstrates the impact of the macro-political environment on justice reform. The authors argue that the democratic transition and a growing emphasis on counter-terrorism have acted as twin drivers on penal reform in Algeria. Whilst these two drivers are not seen as inherently contradictory, there are tensions between them. The report also raises other political dimensions to Algeria's penal reform, for example suspicion regarding the independence of the judiciary and the impact of the declared State of Emergency on individual rights. The authors also note that there has been a lack of genuine political will for reform.

- ICG, 2007, 'Haiti, Prison Reform and the Rule of Law', Latin America / Caribbean Briefing no. 15, Brussels: http://www.crisisgroup.org/home/index.cfm?l=1&id=4809

This report claims that the Haitian government has failed to demonstrate the political will for prison reform and has in no way responded adequately to the current crisis in Haitian prisons. The Interim Cooperation Framework established in 2004 identified basic commitments for justice reform but there have been no significant steps taken by the government or the wider international community to facilitate the necessary prison reform.

4. Justice reform in Asia

- ICG, 2002, 'Central Asia: The Politics of Police Reform', Asia Report no. 42, International Crisis Group, Brussels:
  http://www.crisisgroup.org/library/documents/report_archive/A400843_10122002.pdf

This report emphasises that police forces and interior ministries in Central Asia are politically very powerful, more so than the military. They have little incentives to reform if that means undermining their personal, political and financial power bases. Central Asian police forces therefore pose a great threat to stability and offer strong opposition to economic and political reform. Corruption is a particular problem as the police tend to be deeply involved in organised crime and extortion. They are viewed by the population as the 'coercive branch of government' rather than a citizen-oriented service. The police often carry out an overtly

political role, for example, violent repression of the political opposition in Uzbekistan. The authors claim that police abuses in the region have an international effect by fuelling extremism and heightening the risk of terrorism. The report criticises donors' lack of coordination and argues that reform should focus less on technical assistance and training and more on structural reform and cultural change.

- ICG, 2007, 'Reforming Afghanistan's Police', Asia Report no. 138, International Crisis Group, Kabul / Brussels: http://www.crisisgroup.org/home/index.cfm?id=5052&l=1

This report emphasises the need to depoliticise the police service in Afghanistan, particularly by institutionalising appointments and operational procedures, by addressing ethnic and gender imbalances and by strengthening civilian oversight. The authors state that the police force currently operates as a coercive tool of the ruling political elites who lack the will to address the culture of impunity and end political interference in the justice sector. Pay and Rank Reform (PRR) for police officers is used as an example of reform that is vital but is undermined by complex political issues, as factional networks compete for posts that oversee lucrative smuggling networks. Donors and the international community are criticised for focusing on technical reform and ignoring the more difficult political issues involved.

- Wilder, A., 2007, 'Cops or Robbers? The Struggle to Reform the Afghan National Police', Issues Paper Series, Afghanistan Research and Evaluation Unit, Kabul, summary and full text: http://www.gsdrc.org/go/display&type=Document&id=2833

This report mentions several political dimensions to the attempts to reform the Afghan National Police (ANP). Firstly, the ANP is dominated by factional militias which have hampered reform efforts. Also, meritocratic appointment procedures have been undermined by President Karzai who made a number of unsuitable senior appointments. Political tensions between international donors have also hindered police reform, as has corruption within the Ministry of the Interior which oversees the ANP.

- ICG, 2003, 'Afghanistan: Judicial Reform and Transitional Justice', Asia Report no. 45, International Crisis Group, Kabul / Brussels: http://www.crisisgroup.org/home/index.cfm?id=1631&l=1

Justice sector reform in Afghanistan is vital to protect religious and ethnic groups, and women from abuses. The post-2001 reform commissions have achieved little. They were initially populated by politically affiliated personnel and became entangled with political rivalries. In contrast, factions within the transitional administration moved quickly to entrench their positions. The report argues for a transitional justice approach to be applied to Afghanistan, although this has been rejected by President Karzai. The authors conclude that 'rebuilding the justice system needs to move higher up the political agenda' (executive summary).

- ICG, 2004,'Building Judicial Independence in Pakistan', Asia Report no. 86, International Crisis Group, Brussels: http://www.crisisgroup.org/home/index.cfm?id=3100&l=1

This report argues that the Musharraf government has deliberately created a subservient judiciary. Reform is desperately needed, particularly to make necessary changes to the legislative framework for the appointment and removal of judges and to the jurisdiction of ordinary courts. For example, judges must currently make an oath of allegiance to Musharraf and the executive has to 'confirm' all judicial appointments. However, the authors emphasise that these required reforms will be pointless unless the government makes a credible commitment to respect the rule of law.

- ICG, 2006, 'Islamic Law and Criminal Justice in Aceh', Asia Report no. 117, International Crisis Group, Brussels: http://www.crisisgroup.org/home/index.cfm?id=4295&l=1

Aceh is the only region of Indonesia with the right to apply Shari'a law in full. Since 1999, Aceh's government has begun to create an institutional framework to ensure adherence to

Shari'a. This has sparked a fierce debate about what role government should play in encouraging adherence to Islamic law. The report analyses the various political reasons that led to Aceh being granted the right to apply Shari'a law. Ultimately these reasons aimed to solve the conflict and win the region back from insurgency and separatism.

- ICG, 2001, 'Indonesia: National Police Reform', Asia Report no. 13, International Crisis Group, Brussels: http://www.crisisgroup.org/home/index.cfm?id=1459&l=1

Despite democratic elections, Indonesia still experiences massive corruption and operates politically on deep patronage networks. Any reforms that look to threaten these power structures will be strongly resisted. Reform in Indonesia is therefore more about generating political will than about changes to operational procedures. Given the stark absence of political will for police reform and a heavily politicised police leadership, this report advocates focusing on reform in areas that do not threaten existing power structures in the hope that this will gradually lead to wider change and reduced corruption.

- OSJI and CIJ, 2004, 'Unfulfilled Promises: Achieving Justice for Crimes Against Humanity in East Timor', Open Society Justice Initiative and the Coalition for International Justice: http://www.justiceinitiative.org/db/resource2?res_id=102368

This report highlights the impact of international politics on efforts at justice reform. The authors argue that there has been limited international political will for justice reform in East Timor, despite the proclamations of various international organisations after the bloodshed in 1999. They emphasise that both the UN-established Special Panels in East Timor and the Ad Hoc Human Rights Court in Indonesia have failed to bring to account the main perpetrators of atrocities. The report indicates that the biggest obstacle to justice reform has been Indonesia's consistent shielding of officers from accountability.

3. Justice reform outside Asia

- Rauch, J., 2004, 'Transforming Police-Community Relations in South Africa' in Ferguson, C. and Isima, J., 2004, 'Providing Security for People: Enhancing Security Through Police, Justice and Intelligence Reform in Africa, Global Facilitation Network for Security Sector Reform, Shrivenham, UK: http://www.ssronline.org/edocs/gfn060_pfsp2.pdf

This short article demonstrates how the macro-political environment can affect police reforms, for example via the 'democratisation' of the police force and the dismantling of Apartheid policies due to the arrival in government of the ANC in South Africa. The article explores how community policing approaches were favoured during the transition period when the government had weak control of executive functions. However, these community approaches were under-resourced and as a result are now weak and ineffectual. In contrast the Mbeki government has sought to take a 'tougher' line to criminal justice reform and has deliberately distanced itself from principles of community policing. The article also briefly discusses how human rights legislation was undermined by police, prison officers and magistrates as they felt it threatened their professional discretion and undermined their experience and positions.

- Frank, C. and Tait, S., 2005, 'Police Transformation and Accountability in South Africa' in Justice Initiatives: Human Rights and Justice Sector Reform in Africa: Contemporary Issues and Responses: http://www.justiceinitiative.org/db/resource2?res_id=102523

This short article situates police reform in South Africa within an overarching political context of democratisation. South Africa's democratic transition has led to a less centralised, more service-oriented approach to policing, with a particular emphasis on accountability. The article also briefly discusses the politics of civil society involvement in police reform. Early in the transition civil society adopted a supportive role; this is now being questioned in favour of

a more 'arms-length' approach that provides scrutiny over and generates accountability of the sector.

- ICG, 2007, 'Haiti: Justice Reform and the Security Crisis', Latin America / Caribbean Briefing no. 14, Brussels: http://www.crisisgroup.org/home/index.cfm?id=4639&l=1

This report identifies several political dimensions to the justice sector in Haiti which have seriously damaged any attempts at justice reform. These include the lack of independence of the judiciary and pervasive corruption, including within the police and the judiciary. The report also notes that indigent defendants rarely get legal counsel. The authors argue that the Haitian government has lacked political will for reform. This has seriously undermined the post 1994 attempts at reform, despite vast quantities of donor aid being made available specifically for justice reform.

- ICG, 2006, 'Liberia: Resurrecting the Justice System', Africa Report no. 107, International Crisis Group, Brussels: http://www.crisisgroup.org/home/index.cfm?id=4061

The justice system in Liberia has been paralysed by a culture of corruption and impunity that has continued from pre-war days. The Ministry of Internal Affairs provides executive oversight of the customary law system, therefore providing no review of chief's judgements or check on abuses of power. Corruption is rife due to low salaries in the sector. There is poor professionalism and renegade justice forums are even in operation. The report calls for a greater level of involvement from civil society in pressing for justice reform. Liberia's justice system comprises an amalgam of statutory and customary legal systems. However, the authors emphasise the need to focus reform on customary law, as reform of the statutory system would primarily benefit urban elites.

- Skaar, E. and Serra Van-Dunem, J. O., 2006, 'Courts Under Construction in Angola: What Can They do for the Poor?', CMI Working Paper no. 20, Chr. Michelsen Institute, Bergen, Norway, summary and full text available: http://www.gsdrc.org/go.cfm?path=/go/display&type=Document&id=2577&

This case study explores why the poor fail to bring social litigation to court. Many different factors are given, including societal and cultural reasons as well as the politico-contextual factors. The authors state that neither the Supreme Court nor the Parliamentary Commission on Human Rights is independent, which is likely to prevent people from bringing grievances against the state. They also emphasise that the state budget has not prioritised judicial reform and the sector is currently totally under-funded.

- Hirsch, J., 2004, 'Access to Justice for Victims and Defendants in Chile', Justice Initiatives: Legal Aid Reform and Access to Justice, Open Society Justice Initiative: http://www.justiceinitiative.org/db/resource2?res_id=102064

This article compares the pre- and post-reform legal systems in Chile. Hirsch argues that the pre-reform system benefited the wealthy whose expensive lawyers were able to manipulate the system to their advantage. In contrast, socio-economically disadvantaged groups such as indigent defendants suffered negatively as they were given inexperienced attorneys. The article discusses whether reforms have led to better access to justice for the poor in Chile. A case study is included regarding a victim of domestic violence which demonstrates changes to institutionalised gender bias in the legal system under the reforms.

****

Authors and contributors

This query response was prepared by Zoe Scott zoe@gsdrc.org
Contributors were: Linn Hammergren (World Bank), Steve Golub (University of California at Berkeley), Gerald Leather (Cambodia Defenders Project), Adam Stapleton (Northwestern

University and Penal Reform International), Erik Jensen (Stanford University), Matt Stephens (World Bank, Philippines).

Websites visited

Asia Foundation, Cambodian Defenders Project, Cleen Foundation, ELDIS, Google, GSDRC, International Centre for Prison Studies, International Crisis Group, Justice for the Poor, Law, Social Justice and Global Development (LGD), Open Society Justice Initiative, Penal Reform International, Penal Reform and Justice Association (PRAJA), Warwick University, World Bank.

Need help finding consultants?

If you need to commission more in-depth research, or need help finding and contracting consultants for additional work, please contact us again at consultants@gsdrc.org (further details at: http://www.gsdrc.org/go.cfm?path=/go/helpdesk/find-a-consultant&).